

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

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Bell Atlantic-Massachusetts Tariff No.)

17 Digital Subscriber Line Compliance Filing) D.T.E. 98-57, Phase III

and Line Sharing Filing)

RHYTHMS LINKS, INC.'S
MOTION FOR CONFIDENTIAL TREATMENT

Rhythms Links, Inc. ("RLI") hereby requests that the Massachusetts Department of Telecommunications and Energy ("DTE" or "Department") grant this Motion requesting confidential treatment of data provided by RLI in response to the following record request from Verizon (f/k/a Bell Atlantic-Massachusetts): BA-MA-RR- 3.

ARGUMENT

BA-MA-RR-3 asks that RLI describe the process for provisioning xDSL services over a line shared loop once RLI places an order with Verizon until the service is provisioned to the end user. RLI's response to BA-MA-RR-3 should be granted confidential treatment because the information contained therein is proprietary and competitively sensitive.

Under G.L. c. 25, §5D, the Department may protect from public disclosure, "trade secrets, confidential, competitively sensitive, or other proprietary information provided in the course of proceedings conducted pursuant to this chapter." In determining the confidentiality of certain business information, several factors are relevant, including the extent to which the information is known outside of the business, the extent of measures taken by the employer to guard the secrecy of the information, the value of the information to the employer and its competitors, and the ease or difficulty with which the information could be properly acquired by others. *Jet Spray Cooler, Inc. v. Crompton*, 361 Mass. 835, 839 (1972); *Augat, Inc. v. Aegis, Inc.*, 409 Mass. 165, 169 (1991).

RLI's response to BA-MA-RR-3 describes the company's line sharing UNE installation process. RLI has redacted from its response information which relates to highly sensitive commercial arrangements with third parties, as well as internal planning activity. This information, if disclosed publicly, would damage RLI's position in a highly competitive market place, as this type of information distinguishes the performance of one provider from its competitors and, therefore, is proprietary and competitively sensitive. RLI has invested significant resources to craft an efficient and effective provisioning procedure involving third parties. Disclosure of this process would not only strip the company of its competitive advantage, but would also allow competing providers to duplicate RLI's procedure and use the process for their commercial benefit.

It would be patently unfair to permit this sensitive and competitively valuable information to be delivered to RLI's competitors. RLI's planning activity and third party arrangements are precisely the type of data that G.L.c. 25, §5D authorizes the Department to protect from access by third parties and the Department should

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exercise its authority to prevent such disclosure to the public.

RLI is willing to provide this response subject to the terms of a protective agreement that would properly limit the persons accorded access to this data to attorneys of record only and the use of the information to the conduct of this proceeding. Such restrictions would seek to prevent actual and potential competitors from unfairly benefiting from access to the data contained in this response.

RLI has fully satisfied the three part test under General Laws Chapter 25, Section 5D. It has demonstrated that the requested information is competitively sensitive. It has proved the need for its non-disclosure. Finally, it has provided a redacted response on the public record and narrowly limited the amount of information subject to confidential treatment.

CONCLUSION

RLI respectfully requests that the Department grant this motion to afford confidential treatment to RLI's response to BA-MA-RR-3 because certain data contained in that response constitutes business information is " competitively sensitive " under

Massachusetts law and, therefore, entitled to protection from public disclosure in this proceeding, and because RLI has otherwise satisfied the three part standards of General Laws Chapter 25, Section 5D.

Respectfully submitted,

RHYTHMS LINKS, INC

By its attorney,

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